

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSEPH RAY ZEIDERS,

No. 4:17-CV-0324

Plaintiff,

(Judge Brann)

v.

NANCY A. BERRYHILL,

Acting Commissioner of Social Security,

(Magistrate Judge Schwab)

Defendant.

ORDER

JULY 18, 2018

BACKGROUND:

Plaintiff filed a complaint in this Court on February 21, 2017, after being denied supplemental security income and disability insurance benefits.¹ Plaintiff requests that this Court vacate the decision of the Commissioner and additionally, direct an award of benefits. The Commissioner requests the Court vacate the decision with the opportunity for a rehearing by the Administrative Law Judge. The Magistrate Judge, to whom this matter was jointly assigned, issued a report and recommendation on June 8, 2018 recommending reversal and the opportunity for a rehearing.

¹ ECF No. 1.

The District Court can award benefits only when the administrative record of the case has been fully developed and when substantial evidence on the record as a whole indicates that the plaintiff is disabled and entitled to benefits.² I agree with the position of the magistrate judge and find here that this is not an extraordinary case. I will, however, reverse the decision of the Commissioner and will provide the Defendant the opportunity to conduct a rehearing, pursuant to sentence four of 42 U.S.C. § 405(g).

Accordingly, the report and recommendation will be adopted, but only in part. The magistrate judge recommended vacating the decision of the Commissioner, but then, conflictingly, recommended entering final judgment in favor of the Commissioner. While I presume this was a typographical error, I cannot adopt the recommendation in full for this reason.

AND NOW, IT IS HEREBY ORDERED that:

1. The Report and Recommendation of Chief Magistrate Judge Susan E. Schwab, June 8, 2018, ECF No. 23, is **ADOPTED** in part and **REJECTED** in part.
2. The decision of the Commissioner of Social Security is **VACATED** and **REMANDED**.

² See *Gilliland v. Heckler*, 786 F.2d 178 (3d Cir. 1986); *Tennant v. Schweiker*, 682 F.2d 707, 710 (8th Cir. 1982).

3. Final Judgment is entered in favor of Plaintiff and against Defendant pursuant to Fed. R. Civ. P. 58 and sentence four of 42 U.S.C. § 405(g).
4. The Clerk is directed to close the case file.

BY THE COURT:

s/ Matthew W. Brann
Matthew W. Brann
United States District Judge